IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

Crl.MC.No. 2006 of 2007()

AGAINST THE JUDGEMENT/ORDER IN BA.2130/2006 Dated 05/05/2006

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PETITIONER: ACCUSED NO.3

P.JAYA RAJAN,
S/O.RAMACHANDRA KURUP, RAMA NILAYAM,
VALLIKEEZHU, KAVANADU P.O., KOLLAM.

BY ADV. SRI.VINOY VARGHESE KALLUMOOTTILL

RESPONDENTS: COMPLAINANT/STATE

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1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
KOLLAM EAST POLICE STATION,
KOLLAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 22/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2006 of 2007

Dated this the 22nd day of June 2007

O R D E R

Is the petitioner, in whose favour directions under Section 438 Cr.P.C had been issued, liable to continue to comply with the conditions imposed while granting such an order of anticipatory bail even when he later seeks and obtains regular bail from the competent court? This is the question of interest raised before this court in this Criminal Miscellaneous Case by the learned counsel for the petitioner. I am informed that confusion prevails in the minds of even counsel and Magistrates on this aspect not to speak of the travails of the police and accused persons.

2. To the skeletal facts first. The petitioner approached this court with an application for anticipatory bail under Section 438 Cr.P.C. He who faces allegations inter alia under Section 406 I.P.C was granted anticipatory bail for a period of one month by another Bench of this Court. The said Bench observed that the anticipatory bail order was to hold the field for a period of one month within which period the petitioner was to surrender before the learned Magistrate and seek regular bail. Conditions

were also imposed by the learned Judge which included the condition that the petitioner must report before the investigating officer on all Wednesdays.

3. The learned counsel for the petitioner submits that within the said period of one month, the petitioner had appeared before the learned Magistrate and sought regular bail. Regular bail was granted also. That regular bail was granted not subject to any conditions, submits the learned counsel. Is the petitioner, thereafter, liable to comply with the conditions imposed when anticipatory bail was granted? That is the question that is raised now. The petitioner has come to this court with a prayer that the said conditions may be deleted. The learned counsel for the petitioner submits that if the position is not clarified, unnecessary confusion and chaos is likely to result. Police and the learned Magistrate insist on such compliance, it is submitted.

4. I find absolutely no scope for any confusion or chaos. Anticipatory bail has been granted subject to conditions. I have in Jyothish vs. State of Kerala [ILR 2005(4) KERALA 220] after adverting to all the precedents taken the view that it is not ordinarily necessary to limit the operation of the order to any

specific period of time. Unless specific reasons emerge in the facts of a given case it is not necessary to limit the period of operation of the order invariably in all cases. But in this case the learned Judge, on the facts of the case, has granted an order of anticipatory bail limited to a specific period. The important condition in the order is that the order shall live and remain in force only for a period of one month. Within the period of one month, the petitioner is obliged to seek regular bail from the learned Magistrate. The learned Magistrate must within that period consider the application on merits and pass appropriate orders. Certainly unless there are other specific observations in the order of the superior court, any Magistrate must be persuaded or led by the fact that the superior court has, after considering the materials, come to the conclusion that the petitioner is entitled for anticipatory bail itself. While considering the exercise of discretion to grant regular bail or not, certainly the fact that the superior court had granted anticipatory bail would influence and must weigh with the Magistrate. But certainly the conditions imposed by the superior court cannot over live the period of life of the anticipatory bail

order. I am, in these circumstances, of the opinion that when regular bail is obtained from the learned Magistrate after the accused surrenders within the prescribed period in terms of the anticipatory bail granted, the conditions that would bind the accused thereafter are not the conditions imposed in the order of anticipatory bail but only conditions which are imposed by the learned Magistrate while granting regular bail. The learned Magistrate may re-impose the conditions which are imposed by the superior court in the anticipatory bail application. He may choose to impose different conditions, if circumstances require. He may choose not to impose any condition at all. At any rate, I am unable to accept the argument that the conditions imposed in the anticipatory bail order shall continue to remain in force even without any subsequent order by the learned Magistrate. Such conditions are imposed by the superior court to regulate the conduct of the accused till he secures regular bail. Supposing the accused chooses not to surrender before the learned Magistrate within the stipulated period, then the protection of the order will not be available to the accused after elapse of the period stipulated. That means the order of anticipatory bail

lapses after the prescribed period. That order does not live to offer any protection beyond the stipulated period. In these circumstances, the conditions imposed cannot certainly outlive or live beyond the order itself. I find this petition hence to be without any merit. If any condition has been imposed on the petitioner by the learned Magistrate, he can seek modification/deletion of that condition before the learned Magistrate. He is not bound to comply with the conditions stipulated in the anticipatory bail order (unless reimposed by the learned Magistrate) beyond the period prescribed.

5. This Criminal Miscellaneous Case is, in these circumstances, dismissed with the above observations.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007